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Of Counsel
H. LaDon Baltimore
T.R.A. DOCKET ROOM

December 23, 2003

**Tennessee Regulatory Authority
Attn: Sharla Dillon
460 James Robertson Parkway
Nashville, TN 37238**

**RE: Complaint of Ben Lomand Communications, Inc. against Citizens
Communications Company of Tennessee, LLC d/b/a Frontier
Communications of Tennessee, Docket No. 02-01221**

Dear Ms. Dillon:

I am enclosing with this letter the original and fourteen (14) copies of Ben Lomand's Reply in the above-referenced matter.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,



**H. LaDon Baltimore
Counsel for Ben Lomand Communications, Inc.**

HLB/chm

**Cc: LeVoy Knowles
Guilford F. Thornton, Jr., Esq.**

Enclosure

RECEIVED
BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

T.R.A. DOCKET ROOM

IN RE:

**COMPLAINT OF BEN LOMAND
COMMUNICATIONS, INC.,**

Against

**CITIZENS COMMUNICATIONS
COMPANY OF TENNESSEE LLC,
d/b/a FRONTIER COMMUNICATIONS
OF TENNESSEE.**

DOCKET NO. 02-01221

**BEN LOMAND COMMUNICATIONS, INC.'S
REPLY TO CITIZENS' RESPONSE**

Ben Lomand Communications, Inc. ("Ben Lomand"), by and through its undersigned counsel, submits this Reply to the Response filed by Citizens Communications Company of Tennessee, LLC, d/b/a Frontier Communications of Tennessee ("Frontier" or "Citizens").

Ben Lomand's Motion for Leave to File a Reply to Citizen's Response was considered at the Status Conference held at the Tennessee Regulatory Authority ("TRA"). Ben Lomand's motion was not opposed and the Hearing Officer, Randal Gilliam, granted the Motion. On December 12, 2003, Ben Lomand filed it's Third Motion to Compel Response to its Discovery Requests. On December 17, 2003, Citizens filed its Response to Ben Lomand's Motion to Compel.

In Frontier's Response, several arguments and reasons for dismissing Ben Lomand's Third Motion to Compel Responses were set forth. In order to address the assertions in Frontier's Response, Ben Lomand states as follows:

I.

The discovery requests propounded by Ben Lomand are necessary for Ben Lomand to prove violations of TCA Section 65-5-208 (c). In its Third Motion to Compel responses, filed December 12, 3003, Ben Lomand set forth the reasons that Interrogatories 9-11 & 16 in Ben Lomand's First Set of Discovery Requests and Date Request #1 in the Second Set of Discovery Request, are relevant necessary and pertinent Ben Lomand's proving its case in violation TCA Section 65-2-208 (c). Rather than restate the arguments in its December 12th filing, Ben Lomand refers to the December 12th filing as if incorporated herein.

II.

Discovery is not limited, as alleged by Citizens, to the issue that Citizen's pricing is below the price floor set forth in TCA Section 65-5-208 (c). In its Order of April 29, 2003 the TRA held that "anti-competitive behavior and predatory pricing of TCA Section 65-5-208 (c) shall be considered in the contested case".

Therefore, the issues in this case are not limited to pricing below the price floor. This code section, prohibits not only pricing below the price floor but also prohibits "cross subsidization, preferences to competitive services or affiliated entities, predatory pricing, pricing squeezing, pricing discrimination, tying arrangements or other anti-competitive practices".

Ben Lomand is not limited in this case to proving below price floor pricing, but may also prove other enumerated prohibited practices in TCA Section 65-5-208 (c). In this case, Ben Lomand can seek to prove pricing below the price floor, or pricing below the price floor in combination with other anti-competitive practices, or prove other anti-competitive practices without proving pricing below the price floor.

III.

Discovery should not be limited to proving whether the pricing is below the statutory price floor, but to encompasses anti-competitive practices under TCA 65-5-208(c).

Ben Lomand has issued its discovery request and based partly upon the answers received from those discovery requests, will present its case. In its Order of April 29, 2003, the TRA did not limit discovery and issues to pricing below the statutory price floor.

The proper procedure in this case is to allow the discovery to proceed, and for Ben Lomand to present its case in the form of Pre-Filed Testimony. At such time Citizens can file rebuttal testimony to any of the testimony so filed.

Citizens had the opportunity when it issued its original discovery request to included written discovery related to Ben Lomand's financial strength and cost structure, market strategy and penetration in relationship to Ben Lomand Telephone Co-op, Inc. However, Ben Lomand vigorously protests the issuance of any additional written discovery at this time on these issues. Any such issues were required by TRA regulations ¹ to have been raised by Citizens in its response to the complaint, as an affirmative defense or counter complaint. It is too late for Citizens to now raise any of these issues. If Citizens has

¹TRA Rule 1220-1-2-.03

any complaints about any relationships between Ben Lomand Communications, Inc. and Ben Lomand Telephone Co-op, Inc., such issues should be presented in a complaint to the TRA.

In the first paragraph of the sub-section "B", Citizens alleges that "BLC's complaint is devoid of specificity". It is too late for Citizens to raise any complaint for lack of specificity, because the TRA rules requires such issues to be raised in a Motion for a definitive statement before filing an answer or within the answer. ²

Ben Lomand's complaint is sufficiently specific. It has alleges anti-competitive practices and violation of TCA Section 65-5-208 (c). It is the nature of a contested case that proof of such comes during the discovery process. It is impossible for Ben Lomand, in this case, to be more specific without the discovery requests. As stated above, Citizens is required to have made its request for specificity earlier in this proceeding.

IV. CONCLUSION

For the foregoing reasons, the authority should grant Ben Lomand's Motion to Compel and direct Citizens/Frontier to respond completely and fully to Ben Lomand's discovery requests. Furthermore, all requests by Citizens for discovery relating to Ben Lomand's finances, etc. and for limiting discovery to below price floor pricing be denied.

²Id.

Respectfully submitted,



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Counsel to Ben Lomand Communications, Inc.

Certificate of Service

The undersigned hereby certifies that on this the 23rd day of December, 2003, a true and correct copy of the foregoing has been forwarded via first class U. S. Mail, hand delivery, overnight delivery, or facsimile transmission to the following.

Guilford F. Thornton, Jr., Esq.
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H. LaDon Baltimore